726 the end. A man appointed for the task carried this flag in the front line of battle. He was never to look back and always to walk forward, and he bore no weapons other than a bow and arrows. If he was killed, another man took his place. When a village was besieged,
727 all the spoils devolved by right to the naba, who took /24/ his choice and left the rest to his men. All able-bodied men who could still fight and who refused to become slaves were put to death; the old men were spared, and the women and children reduced to slavery. The naba became master of all the slaves taken by cavalrymen mounted on his own horses. If any disagreement arose about a capture, the naba seized the prize; if the individuals concerned managed to reach an agreement, they shared the booty amicably. Those who had seized a horse or a slave on their own initiative could keep it, but more often than not they offered part of their prize to the naba in order to avoid difficulties. The war did not end with a peace treaty. It ceased when the loot was considered sufficient. The Gourounsi and Bousansé countries thus were true granaries for the Mossi, who drew upon them according to their needs.

692 The nabas did not merely administer their lands and collect taxes; they also dispensed justice, civil and criminal. The village chief usually judged a case of first instance, but the convicted party could appeal the sentence to the canton chief and through him to the province chief, or he might even resort directly to the latter. The judges
695 were always assisted by assessors, the village elders for the petty nabas, the ministers for the province chiefs. Criminals were judged as promptly as possible, and the accused were subjected to imprisonment only while awaiting the arrival of witnesses. They were allowed to name their own witnesses, and these were summoned.

No questioning similar to that of our examining magistrates preceded the session. Everything took place openly, and anyone could speak up whenever he pleased. Torture was not employed to obtain incriminating confessions, but sometimes was used to unmask false witnesses. Sons were not allowed to testify in favor of their father, nor slaves and servants in favor of their master: their testimony might too easily be biased.

In case of dispute, there was no trial by ordeal nor intervention by a sorcerer. The judge did not put the witnesses under oath, but a litigant could say: "If I lie, may I fail to rise from here (that is, may I die)." If someone accused of being indebted to a recently deceased individual denied this debt, the heir could lead him to the

695 tomb and force him to drink water in which earth from the grave had been diluted. This test was greatly feared, for the Mossi believe that the deceased will come and take his revenge.

The defendant went free unless his guilt was proved by witnesses. When arguments arose about the ownership of fields, domestic animals, etc., each person concerned would give his arguments and summon his witnesses, and the judges made a decision on the basis of the discussions. If two women quarreled, their husbands were supposed to get together and reach a decision. The province chief judged disputes
692 concerning marriage. For instance, if a girl had been promised to someone and the bride price was paid in part, and then her father changed his mind and gave her to another, the disappointed suitor could appeal to the province chief, who saw to it that the payment was returned. If the defendant ran away to avoid trial, he could only be tried in absentia if witnesses deposed against him.

696 /25/ The sentence was carried out as far as possible, even in the
691 absence of the convicted party; if he returned, the trial was not re-
672 opened but he could appeal to the province chief. The family is held responsible in every case. If the sentence includes a fine, and if the convicted person's property is insufficient, the property of his relatives is seized. People are held accountable for their children's debts, and if the defendant runs away, one of his relatives is seized in his place. On the other hand, the head of the family is the absolute master and the judge of the family. He must pay his children's debts and the fines they have incurred, but he may chastise them, even put them to death, or banish and curse them, a punishment which as a rule is greatly feared. All this indicates the strength of the family ties, which we shall study in the second part of this work. The naba saw to the execution of the sentence pronounced by the court; the executive and judicial powers were vested in the same person. If anyone refused to pay his debts or to pay the inflicted penalty, he was stripped of his property. No commutation of the sentence was allowed, and the person condemned to irons or to death had to suffer the sentence himself and could not go free by paying a fine or by substituting a slave. Capital punishment was carried out in public. The province chief was entitled to grant a pardon, but, of course, he made use of this right quite rarely. A man's life counts for so little in the eyes of the Black!

[693] [761]

695 The procedure was the same for all, men and women. The sons
681 of nabas, the nakomsé, however, were neither tried nor punished in
554 public. They were not tied with ropes, but with strips of fabric; and if condemned to death, they were hanged rather than clubbed to death. In any case, complaints against them were extremely rare. The sons of a powerful naba could do anything with impunity.

681 For examples, here are a few crimes and their respective punishments. Of course, there was no written code, no formal scale of penalties. Everything depended on custom and on the whim of the
696 judge. Thus, the wealthy could obtain sentences in their favor by
691 paying the judges, and thieves could avoid punishment by sharing their loot with the naba. Otherwise, a thief caught in the act was
685 flogged, sometimes to death. He was condemned to several months in irons, and exposed to public ridicule before the naba's hut; he had to restore what he had taken, and his family was held responsible. If he repeated the offense, he was led to the marketplace with a rope around his neck; he was supplied with an abundance of meat and dolo /beer/, and then clubbed to death at the foot of a tree. In Ouagadougou he was sometimes made a eunuch instead. This was almost the equivalent of a death sentence, because the operation was carried out in such barbarous fashion that death often ensued. French justice more leniently imprisons the thieves, a cause of complaint by honest people who find the punishment too mild.

682 In case of willful murder, the killer was put to death; if he could
683 not be found, a member of his family was executed in his place.
672 In case of a brawl, no attempt was made to determine who had started the fight or who was in the right. (Manslaughter was punished by a fine paid to the victim's family. The right /26/ of self-defense was, of course, recognized. If blows and wounds had been inflicted, the adversaries were put in irons.)

681 Old women were often accused of being witches and of eating
683 children's souls. If their crime was considered proved, if the sorcerers
888 consulted declared some old woman guilty of a baby's death, she was put to death in very cruel fashion: a second opening was made in a clay pot so that her head could be put completely within it; then the pot was heated intensely and placed over the head of the unfortunate woman.

685 If a goat or sheep caused damage to a field, the animal could be killed on the spot. The owner had to be notified, but he was not

791 it? Will my journey be successful? And so forth. If the answer is un-
756 favorable, what must I do to avert misfortune? The bagré are resorted to especially in case of illness, to find out which spirit caused the disease and what the spirit wants. The role of the sorcerers is thus /104/ chiefly to prescribe the sacrifice and to indicate to whom it must be directed. More rarely they prescribe a medicine, but no one puts much faith in such remedies; in most instances, they indicate a negative treatment by stating what is forbidden to the patient.

756 They use the process of elimination to spot the disease. "He has a headache," says the sorcerer. If the reply is negative, he mentions another part of the body. "A stomach-ache . . . No. A pain in the arm . . . No." He must eventually hit on the right statement. If the sick person is cured following the prescribed sacrifice, the sorcerer is said to be skillful and to be truly in touch with the spirits, and his practice and income grow accordingly. If the patient is not cured or dies, it is either because the sorcerer has cheated or because he does not "see." Another sorcerer is sought out, in the hope of finding a true seer.

Sorcerers are carefully listened to, and everything they prescribe is faithfully carried out. Since they sometimes guess right, since even more often the patient is cured through auto-suggestion because the sorcerer said that he would be cured, since among people who fall ill those who get well are fortunately more numerous than those who die, for all these reasons the prestige of the sorcerers is high and their practice numerous, for it includes all the Mossi. The bara (plural of bagré) are not feared. They are abused when their prescriptions fail, and they are never consulted in the course of trials to find out the name of a culprit.

791 On the other hand, people often ask them who has killed their
695 child, their wife, their livestock, and the bagré sometimes indicates the culprit, with resulting enmity between the wronged party and the individual pointed out as guilty. The latter often resorts to trial by ordeal in self-defense. He himself suggests that he should drink poison, or that he should be burned with a red-hot iron or strangled with braided shreds of straw. If he is innocent, the poison will not harm him, the fire will not burn him, the straws will come apart. Only those who wished to do so resorted to such ordeals, and the judges never made use of this procedure. In trials actual proof had to be submitted.

681 As far as penalties were concerned, Mossi justice was stern and thus ran counter to the "patriarchal" justice of the Bobo, Gourounsi, etc. Murder was always punished by death (except in the case of nobles). As for thefts, physical aggression, and matters involving debts, they were adjusted in the manner described when we discussed the Yarsé, who were subject to Mossi justice since they were settled in their territory /not translated/. [754] We shall not, therefore, go over this again. Let us merely note that the Mossi, being fetishists, were familiar with matters of sorcery.

695 754 At Dembo, in the Yatenga area, when a young person died suddenly, "red powder" would be mixed in water and everyone would drink of it while swearing by Tensé /Tr.: the earth deities/ that he was innocent. The culprits would die. In other villages of the Yatenga area, people suspected of dealing in sorcery had to drink earth taken from the spot where sacrifices were performed and diluted in water. Those /581/ who refused to drink and swear were killed. At Kabayoro, a Mossi village located in the canton of Koumbili, if a man or woman suddenly ill, it was said that it was So-and-So, a sorcerer, who had eaten the soul. If the sick person died, his hands were washed with water and the liquid was given to the sorcerer to drink. He had to swear his innocence and invoke death unto himself if he should lie. If guilty he died; if innocent the water did him no harm. If he refused to swear and drink, he was put in irons and left there to die of hunger and thirst. The bara /soothsayer/ played no role in such occurrences. It was the sick person who pointed out the sorcerer. If the patient failed to designate someone, however, this meant that he was simply dying of illness. [761]

701 Now for the army and police. "In case of war," says Moulins, "the province chiefs summoned the canton chiefs, who hastened forth with all their able-bodied men. They all gathered behind the Tamsaba and followed him.

625 "As for policing, it was taken care of by village and canton chiefs, who arrested culprits with the help of their own followers, or, if necessary, by summoning the whole male population of the village."

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The Mogho Naba had an elaborate court composed of many officials, relatives, and servants. The most important courtiers were the five ministers, who appeared daily at court and took part in all important ceremonies in addition to administering their own provinces. Aside from these men, the Mogho Naba had a number of other officials called Naba whose responsibilities covered the full range of duties in the palace and in the capital. One of the most interesting was the Pwe Naba, a royal diviner and court chaperon. His chief duty was to guard the morals of the pages and the royal wives; he also administered the ordeal to persons accused of treason. The pages were required to be chaste until they were discharged from the palace, lest their amorous adventures lead them to compromise the virtue of the royal wives, with whom they were constantly in contact. A wife and a page suspected of adultery were tested by the Pwe Naba. He forced them to look into a mirror or a calabash of water, and declared them guilty or innocent according to the way their faces were reflected. If they were found guilty, the wife was executed and the page was either executed or discharged in disgrace. The Pwe Naba also saw to it that strangers did not address the ruler's wives either on the street or in the market. Offenders were executed.

The Dapore Naba served as the court's chief executioner and as head of a group of the Mogho Naba's hereditary serfs. Members of the royal clan were executed by strangulation, since royal blood could not be shed; all other persons were executed either with a sword, by hanging, or with heavy clubs. Another palace official was the Ouedrango Naba, the head groom. It was he who saddled and presented the king's ceremonial horse to him at the morning ceremony. The Kambo Naba commanded the palace guard; only he and his guards were permitted to carry guns. The Samande Naba and the Samande Nabila supervised the work of the samande-kamba, young men who worked around the palace courtyard and kept watch with heavy batons to enforce order during ceremonies. A lesser palace official was the Zusoaba Kasanga, who, as chief of the palace eunuchs, ruled over the guardians of the royal harem. The Gande Naba made sacrifices for the ruler and also distributed gifts from the king to the royal officials and the royal household.

Another courtier, and one who played an important role during the installation of the new ruler, was the Ouagadougou Naba. As a direct descendant of the Ninisi, he was all but indispensable at sacrifices propitiating or honoring his ancestors. The Bendere Naba was the chief musician and court historian; according to some reports, a Bendere Naba was killed instantly if he made a mistake while reciting the ruler's genealogy. The Raga Naba was chief of the markets in the capital. Under him were

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V

LAW AND THE JUDICIAL PROCESS

671 The Mossi possessed a comprehensive body of rules governing human conduct. These rules were well known to the people, and violators were punished by the responsible authorities. The Mossi might be said to have had substantive law, but they had no written codes. Nevertheless, the lack of written codes does not warrant Mangin's blanket criticism of Mossi judicial processes: "Of course, there was no written code, no formal scale of penalties. Everything depended on custom and on the whim of the judge. [662] Thus, the wealthy could obtain sentences in their favor by paying the judges, and thieves could avoid punishment by sharing their loot with the Naba."[1] Custom did dictate the penalties, just as "written custom" dictates penalties [692] in all written legal codes. But, as we shall see, the Mossi did have a known [695] scale of penalties. Moreover, a Mossi judge had to be careful in rendering judgment, because his decisions could be reviewed by a higher court.

596 681 The head of the Mossi extended family, the *Yirisoba*, was responsible for the everyday conduct of his charges. It was his duty to settle all family quarrels and to punish persons guilty of theft within the compound, disrespect toward elders, and incest. Punishment for the lesser wrongs included 596 reprimands and floggings. A person found guilty of disrespect to the elders 683 or of incest could be banished from the group. But banishment was so severe 684 that it was imposed only if the criminal refused to make the usual conciliatory gestures and was condemned by all the members of his boodoo. Even after this condemnation, however, he could ask a "sister's son," a yagenga, [613] to intercede for him. This man, the son of a female lineage member, had many privileges within his mother's brother's lineage, including the right to mediate between an exile and his boodoo.

593 586 613 Amicable relations within the family group were most often disrupted by conjugal difficulties. A Mossi husband could occasionally flog an erring wife, but he was not allowed to maltreat her. When a man became disgusted with his wife and wished to repudiate her, he put her water pots in the compound yard. This rather serious action often led to hostile relations

offender was caught in the act, he was immediately killed. If he was merely suspected of guilt both by his own lineage and by the lineage of the wronged woman, he was banished from his lineage and from the village. So swift and sure was this punishment that a rapist always fled if he believed he would be discovered. The Mossi considered rape such a heinous crime that if the act resulted in pregnancy, an abortion was attempted; if this failed, the child was killed at birth. Furthermore, the rapist could never hope to return to his community, because even if the yagenga appealed on his behalf and his lineage forgave him, the community ban still stood.[2]

The village chief was usually aware of the torts and crimes that occurred in his village, and of how the families concerned had handled them. He seldom interfered in the internal affairs of a lineage, or in problems between lineages, unless he felt that a case was beyond their legal competence. In the case of a rapist's expulsion, community feeling usually ran so high that if the chief intervened, it was only to support the will of the community. However, when people could not settle their differences peaceably or when a major crime was committed within a village, the chief usually summoned the offender to his court for trial. His right to do so was sanctioned by his possession of the nam, but the very concept of the nam often made his task difficult. If he was a commoner, the nobles often emphasized their relationship to the holder of the royal nam, the district chief, and objected to being tried by a commoner. They usually appeared at the village court if summoned, but often attempted afterward to find some excuse for taking their case to the district chief. They felt that their local reputation would prevent them from receiving a fair hearing from anyone but their lineage brother. Furthermore, if they were judged and convicted in the lower court and the verdict was confirmed in the district court, they felt that the district chief, in concurring with the village chief, had broken the solidarity of their lineage. But if they took their case directly to the district chief, they knew they were being judged by an equal or a superior, and that an unfavorable judgment would not damage their status.

The competence of the village chief to deal with court cases was limited.[3] He did pass on all the legal infractions that occurred in his village, but he tried to adjudicate only the minor cases. Thus, he tried cases involving theft, quarrels, trespassing, adultery, indebtedness, and abuse, and tried to settle them by reprimanding the guilty ones. He sent cases involving serious injury and homicide to the district court, along with cases he was unable to resolve.

The district court was a most efficient and effective judicial organ, and the nature of the Mossi judicial process was most evident on this level. The

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district court did not deal with all cases referred to it. Many cases, especially those concerning the behavior of women, were referred back to the village to be resolved by the respective lineages. The district chief considered it beneath his dignity to deal with such cases, and his guards ostentatiously chased away the litigants. He consented to try such cases only when he suspected that more serious trouble would develop if he did not. Theoretically, district courts could not try cases involving the death penalty, but in practice most of them did. Higher chiefs tolerated this as long as district chiefs did not abuse their usurpation of power.[4]

When a major crime was committed in a district, the case was usually sent immediately to the district court. The chief of the village where the crime had been committed sent one of his relatives with the accused or with the litigants to the district chief's compound, and dispatched another relative to notify the village administrator. The administrator either went to the district court to await the litigants, or sent his representative to meet the court-bound party on the way and question them about the case. Such parties were often very large, because the Mossi believed that a man should not go to court alone. They felt that the criminal act of a relative reflected on all of them, and that it was important for them to appear with him. To quote a Mossi proverb, "A chicken without its feathers is a very small bird indeed." Therefore, no matter how grievous his crime might be, the accused was accompanied to court by his relatives. If his own lineage members refused to do so, his mother's patrilineage was duty-bound to come to his aid. These relatives believed that they would incur ancestral wrath if they refused to help him.

As soon as the accused or the litigants arrived at the district chief's compound, a page notified him that the people of such-and-such a village had brought him a case. If it was after dark, the chief told his police to take charge of the litigants until morning; otherwise he prepared to convene the court. When the chief was ready, the page reappeared and alerted the court party, who had been milling about in the courtyard under the watchful eyes of the chief's guards. They ranged themselves at a respectful distance on either side of the chief's chair. When he appeared they arose, and when he sat down they knelt and offered the customary salutation. The litigants and their relatives then gave the chief the customary kola nuts, cowries, and chickens.[5] He, in turn, acknowledged the gifts and inquired about the case. The relatives of the village chief who had accompanied the litigants reported what had allegedly happened; what action, if any, had been taken by the village court; and why the case had been brought to the district court (either because the crime was too serious to be judged on the village level,

692 634 695 or because the litigants had rejected the village chief's verdict). The chief then asked the plaintiff or "the people of X village" to state their case. Someone usually spoke up, and after he had finished, the chief asked the defendant or defendants to do likewise. The litigants were then asked to produce reputable witnesses to support or refute the testimony.

[641] [562] [567] Witnesses had to be male, adult (to have begun to "push a beard"), and free. Women and bondsmen had no legal personality before a Mossi court. A slave was represented at court by his master, and a woman by her husband (and, by extension, by his patrilineage). In marital quarrels or property suits, a woman was usually represented by her patrilineage. Only if [576] she alone could give the required evidence was she allowed in court. When she was asked to testify, she knelt, and spoke in a high, thin, soft voice, thus showing extreme respect to the chief and proper deference to the court. Except for these restrictions, any person could be called in as a witness. [578] Tempers often ran fairly high among the litigants' relatives and friends while they gave their testimony and argued the case, but their physical separation and their respect for the chief prevented abuse and fighting. Anyone who started a fight in court was liable to a beating by the samandekamba.

[674] The Mossi believed that most people, given sufficient reason, would commit any crime. Thus they examined the litigants carefully and at great length in an attempt to "get behind" the offense. The district chief interrogated the litigants, but the dignity of the court prevented him from arguing with them. As a matter of fact, most of the cross-examination was done by the litigants themselves. From time to time, the village administrator and the chief's confidants asked brief, direct questions. When a woman was involved, the chief's Pughtiema usually listened to the proceedings from behind a wall and questioned her. When all the evidence was in, the chief either rendered his verdict without delay or retired to the zongo to confer with his confidants and the village administrator. He took the latter course whenever he felt that further discussion was necessary or that false testimony was confusing the issue. Not until he felt that he had the facts well in hand did he return to the court to render his verdict.

The Mossi did not use ordeals in court except in the "chastity trials" conducted by the Pwe Naba. Some litigants called upon the ancestors to kill them if they were not telling the truth; others went to earth shrines and drank an infusion of dust to show that they were not afraid of the spirits who wrought vengeance on the guilty. However, such acts were never carried out in court and thus were of no use to the chief.

The following case, tried in a district court in 1956, illustrates the Mossi

The following case, tried in a district court in 1956, illustrates the Mossi concept of justice. 691 685 634

To reach the central market, the people of Donse village used a path that ran across the fields belonging to two of their fellow villagers, Zami and Isa. The path was normally open all year round, even during the planting season, because neither man wished to inconvenience the villagers. But one day the two men quarreled, and shortly thereafter Isa announced his decision to close his path during the planting season. He said he feared that "people would steal his growing crops" if he left it open. Moreover, he wanted to use the path to increase his planting area. Zami objected to what he considered an insult, and, believing that Isa had violated a customary rule, used the path. In doing so, he crushed several stalks of millet. Isa witnessed his action, and the men came to blows. When the village chief proved unable to reconcile them, they were brought before the district court.

The district chief ruled that according to Mossi custom, a man could close a path during the planting season to prevent people from stealing his crops. But if he closed a path, he had to provide an alternative route, for no one had the right to restrict the movements of others. The chief sympathized with Isa over the small size of his field, but insisted that he provide a path across or around it. However, he persuaded Zami to let Isa use a portion of his land in compensation for the new path. 695 691 685 634

The chief tried to reconcile the interests of Isa and Zami with those of the entire village. He apparently felt that reconciliation was more useful than judgment. He did uphold the law that the right of passage is mandatory, but also maintained that a man has the right to protect his property from potential thieves. At the same time, he made it clear that although a man may defend his own rights, he may not do so by infringing upon the rights of others.

The same principles seem to have been upheld in the following case, also recorded in 1956, which is interesting because it illustrates the flexibility of Mossi law. A man named Hammadou died, leaving fifteen cows as his legacy. Moussa, his eldest son and principal heir, distributed the cows among his father's other sons and male relatives, but did not give any to his father's daughter. Strictly speaking, he was right to exclude her, because a woman was not supposed to inherit any of her father's property unless he had no living lineal or collateral relatives. In practice, however, a daughter always received part of her father's legacy, especially if he had been wealthy. Hammadou's daughter therefore felt slighted, and when she received no redress from Moussa or her other male relatives, she had the case taken to the village chief. He could not resolve it, and referred it to the district chief. 691 428 [562] [692]

When Moussa was called before the district chief, he explained that his [634]

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father had given the woman a silver bracelet before he died, and that the babissi felt that this was sufficient, since she had a husband to provide for her. Furthermore, Moussa said that the inheritance had already been distributed, and that any redistribution would impose a hardship on all concerned.

Interpreting the inheritance law according to common practice, the chief ruled that the milk from a man's cattle was for *all* his children, regardless of sex, and that the fact that the father had formerly given the daughter a bracelet should not have influenced the distribution of the inheritance. The chief stated that the woman should receive at least one cow, and that if the defendant did not agree, he (the chief) would recall all the animals and supervise their distribution. He did not feel that he had to state the principles by which he had reached his judgment, for the consensus among the people of the district was that the heir was trying to take advantage of the law for his own selfish interests. Rather than appeal to Ouagadougou, Moussa and his babissi accepted the verdict.

On the basis of these and other cases, we are led to the conclusion that the Mossi felt that law and the judicial process should serve to reconcile people and to maintain what was commonly considered to be social justice.

Most of the cases at the district court were tried in the same manner as those cited above. Cases involving relations between men and women were the most common. This is paradoxical, because the district chief tried to avoid any involvement with such cases. For every domestic case tried by the district chief, five others were sent back to the village or lineage level. Even so, it is estimated that about 80 per cent of the cases tried by Mossi district chiefs ultimately concerned women. The most common case of this type was the alleged refusal of a woman to return to her husband.[6] If the judge found that another man had encouraged her to leave her husband, he ordered her to return to him and warned her and the man about the possibility of serious difficulty with her husband's relatives. On the other hand, if the chief found that the woman had left a cruel husband who threatened to harm her or her relatives, he warned the husband not to carry out his threats. The Mossi had no bride price; thus, a woman's family was not faced with the problem of restitution. Sometimes, an angry husband did demand that his wife's family return the gifts (*pogopossum*, "thanks for the woman") he had given them from time to time—e.g., at funerals—and they complied.

Adultery cases were next in frequency at the district court. A man convicted of adultery with another man's wife was either warned to leave her alone or fined a sheep or a goat. He was also liable to be put in stocks for

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found to have been justified—that is, if the victim was a thief or a nocturnal intruder—then the accused was acquitted or simply fined. If, however, the accused was found guilty of murder, he was sentenced to die, and the mode of execution was at the chief's pleasure. The chief surrendered the prisoner to his executioners, serfs who lived in the Baglere ward. They took him into the woods and carried out the sentence by strangulation, hanging, decapitation, clubbing, or stoning.

The perpetrator of an unusually heinous crime was often ordered to kill himself with a poisoned arrow. This form of execution was feared most, because it tested the murderer's mettle and called into play the coercive force of his lineage if he proved to be a coward. When such an execution was ordered, the district chief had a poisoned arrow prepared and brought to the murderer's father, his brother, or his father's brother's son. The relative gave the arrow to the condemned man, and, while apologizing for his painful mission, explained that the crime had to be expiated. If the murderer agreed to kill himself, his relatives prepared food and drink for him while his grave was dug. Some proud and brave men helped their relatives dig the oblong-shaped grave required for a murderer; some even insisted on digging it themselves. When both the food and the grave had been prepared, the murderer bade his relatives farewell, took the food and the poisoned arrow, and went into a hut. Here he ate the food and afterward killed himself by pushing the poisoned arrow into his leg. In some cases he had to be provided with a second arrow to hasten his death. If a cowardly murderer refused to kill himself, one of his relatives offered to die in his stead. He told the murderer that death was preferable to the knowledge that his lineage brother was a coward. What would happen, he asked the murderer, if he saw a relative being harmed? Would he choose his own safety rather than run the risk of death? The other relatives asked the same questions, and this subtle coercion was usually sufficient to induce the most cowardly man to kill himself. There are no reports of a murderer's permitting a relative to die for him; life would have been impossible for him afterward. One suspects that if ever a murderer had attempted to elude his fate, the district chief would have had him executed.

The district court also prescribed capital punishment for individuals convicted of arson, abduction, witchcraft, or lese majesty. A person convicted of willfully setting fire to someone's hut or crops was put to death even if no one was killed in the resulting fire; he was held to have jeopardized the life and livelihood of his victims. Similarly, the rare person convicted of threatening the well-being of others through the practice of witchcraft was usually tortured and killed. Conviction usually followed the testimony of witnesses or the confession of the accused.

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The torture was seen as a punishment, and not as a form of ordeal to ascertain guilt or innocence. It was designed to cause the culprit as much suffering as possible before he died, and its harshness reflects the Mossi fear of witches and witchcraft. In one form of punishment called *koudgilga*, the culprit was sent to the smith, who tortured him by placing hot iron balls in both his hands. He was then beaten to death. Another type of punishment called *swengalenga* was more painful. A pottery jar from which the bottom had been removed was heated in a fire. Then it was placed over the head of the convicted witch and allowed to burn its way down onto his shoulders. The culprit was subsequently killed. Sometimes a convicted witch was not killed; instead, a man was sent to Ouagadougou to be castrated and sold as a eunuch, and a woman was sold outside the country as a slave.

Gross disrespect toward the chief and crimes of lese majesty were uncommon among the Mossi. These crimes were usually committed by persons who came into close contact with the chief—nobles and court retainers—rather than by commoners, serfs, or slaves. The most common form of lese majesty was adultery with one of the district chief's wives. The penalty for this was death for both violators. Anyone who dared insult the district chief at court was seized and executed. The same fate awaited those who talked about him maliciously in public or threatened to stir a rebellion against him. If the culprits were commoners, they were executed; if they were nobles, they were strangled in secret or were forced to commit suicide.

The district chief was caught in a dilemma whenever nobles committed major crimes or unlawful acts. They could not be imprisoned, and only the Mogho Naba had the legal prerogative to execute them. When a noble committed a major crime such as treason or rebellion, he was sent to the capital to be executed by slaves, who strangled him with a piece of cotton cloth. However, no district chief could allow the nobles to commit crimes with impunity, secure in the knowledge that they could only be punished at Ouagadougou. If a nobleman subverted the chief's rule by repeated acts of cruelty and brigandage, he was executed, although illegally. The executioners were the Baglere Naba and the Dapore Naba. These two men secretly visited the condemned noble, taking with them a bundle as a present from the chief. This bundle contained a new white robe in which were secreted a chief's bonnet and a poisoned arrow. As soon as the noble saw the gift, he knew that he was being ordered to kill himself. If he attempted to raise an alarm or run away, he was instantly strangled and his body was discarded in the bush. If he accepted the sentence, he was allowed to have food prepared, to eat, and then to kill himself. The chief ordered an elaborate funeral for his kinsman as though he had died an ordinary death. Thus, he was able to observe all the proprieties while at the same

time safeguarding his position within the district and toward the Mogho Naba. For, as already pointed out, the district chief who failed to protect his subjects as well as to rule them was deposed and executed by the sovereign.

The promptness with which the lower courts dealt with litigations left little time for pre-trial bribery, and there is general agreement that the traditional courts were just. Of course, some lower chiefs were known to have been unfair and to have taken bribes. However, they were always in danger of having their verdicts appealed to Ouagadougou.

The Mossi believed in and acted on the dictum that "the truth is at Ouagadougou." They were convinced that they could obtain justice from the Mogho Naba if from no other chief. If a man was not satisfied with the ruling of a lower chief, he was free in theory to seek a higher verdict, and this influenced the kind of justice rendered on the lower level. As a rule, however, the district chiefs did not favor appeals to Ouagadougou. They felt, like most Mossi, that the less their superiors knew about their activities, the better. Thus, the district chief used all of his influence to prevent cases from being appealed to the capital. Some district chiefs were not above coercing litigants into such abstention. They even threatened them with reprisals if the verdict should be unfavorable. But the greatest deterrent against such appeals was the expenditure of time and money. The docket of the Mogho Naba's court was always crowded, and the suitors often had to remain at the capital for as long as three months before they were given a hearing.[9] During this period they often spent more money than the action was worth. Marc states that the word "Ouagadougou" means "the place where one becomes thin," a reference to the amount of money litigants had to spend while waiting for their cases to be heard.[10]

When the object of a lawsuit was the inheritance of cattle, the litigants sustained a double loss. As soon as they asked that the case be taken to the capital, the district chief impounded the cattle. While the case was pending he appropriated the cows' milk, and when the case was settled both he and the Mogho Naba received some animals. Thus, suitors were usually under a great deal of pressure to resolve their problems on the district level. However, if they were determined to go to the capital, they were permitted to do so.

The district chief always sent one of his retainers to the capital with the litigants. The group went directly to the district's provincial minister, who was empowered to hear the appeal and decide whether it should be brought before the Mogho Naba or returned to the district court. If he decided to send it to the Mogho Naba, he placed it on the docket and told the

11: Skinner E-5 (1955-1957) 1964
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litigants when it would be heard. On the day set he took his charges to court, where they waited in the company of the litigants from other districts and from the wards of the capital itself.

The procedure of the Mogho Naba's court differed little from that of the district chief's court. When called upon, the litigant stated his case, called witnesses, and underwent cross-examination by his opponents and by ministers of the Mogho Naba. The litigants were not allowed to look at the Mogho Naba while they spoke, but had to kneel forward on the ground with their faces turned away from him. The Mogho Naba himself seldom looked at the litigants and rarely questioned them. When presented with a complex case, the Mogho Naba, like the district chief, retired with his councillors and canvassed their opinion in order "to ascertain whether or not their verdicts were similar to his own." Nevertheless, he could not follow their advice. He had to make up his own mind, and when he returned to court he rendered his verdict, which could not be appealed. If those who received an unfavorable verdict showed any displeasure, they were taken outside by the palace guards and executed.

The penalties imposed by the Ouagadougou court were usually more severe than those handed down at the district level. The main reason for this was that aside from cases involving residents of Ouagadougou, the lawsuits tried by the Mogho Naba were serious ones and often had been sent to him on appeal. Moreover, the Mogho Naba's court was alone empowered to impose the death penalty within the kingdom of Ouagadougou. It should be noted here once more that district chiefs often executed criminals. But it should also be reiterated that the Mogho Naba never surrendered his prerogative to the district chiefs. They simply usurped it, and if they used it judiciously they were not penalized.

Those nobles and commoners who were convicted for serious crimes at the monarch's court were killed by the royal executioners. Moreover, in contrast to the procedure at the district court, the criminal's property was often seized before his execution. The reason for this is not clear, but it was probably related to the lack of a personal relationship between the court and the relatives of the accused, which enabled the Mogho Naba to impose a harsher penalty. The district chief, it must be remembered, lived in close association with his people and was influenced in his behavior by social relationships. Interestingly enough, the Mogho Naba did not keep the goods seized, but allowed them to be distributed among his executioners.

Crimes against the person or office of the Mogho Naba were punished with greater severity than crimes against the district chief. Any man who was seen speaking to one of the ruler's wives and who did not happen to